STATE OF MICHIGAN

COURT OF APPEALS

ELIZABETH VERVILLE, next friend of CHRISTOPHER VERVILLE, Minor,

Plaintiff-Appellant,

v

PICKWICK TOWNHOUSES,

Defendant-Appellee,

and

BEST BLOCK TRUCKING COMPANY,

Defendant.

UNPUBLISHED
March 6, 2001

No. 218383
Wayne Circuit Court
LC No. 98-818342-NO

Before: Markey, P.J., Whitbeck and J. L. Marlew*, JJ.

MEMORANDUM.

Plaintiff appeals by right from the trial court order that granted summary disposition to defendant Pickwick Townhouses in respect to plaintiff's claim for negligence and dismissed plaintiff's cause of action with prejudice. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Acknowledging that defendant had a duty to maintain the premises in a reasonably safe condition, and assuming for purposes of this appeal that defendant owned or controlled the cyclone fence, we conclude that any breach of duty by defendant in failing to repair the hole in the fence was superseded by plaintiff's act of giving her children express permission to use the hole to gain access to the neighboring property. In determining duty for negligence purposes, "[s]ocial policy must intervene at some point to limit the extent of one's liability." See *Groncki v Detroit Edison Co*, 453 Mich 644, 661 (Brickley, C.J.); 557 NW2d 289 (1996), quoting *Sizemore v Smock*, 430 Mich 283, 293; 422 NW2d 666 (1988). On these facts, we believe the better social policy places the ultimate duty to protect children on their parents, rather than on landlords or other premises owners.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Moreover, accepting arguendo that defendant had a duty to maintain the premises in a reasonably safe condition and that it breached that duty by failing to repair the hole in the fence, the fence condition was not a proximate cause of the harm alleged herein such that defendant could be held liable.[1] "When a number of factors contribute to produce an injury, one actor's negligence will not be considered a proximate cause of the harm unless it was a substantial factor in producing the injury." *Brisboy v Fibreboard Corp*, 429 Mich 540, 547; 418 NW2d 650 (1988). One factor to be considered is whether the actor's conduct created a force or series of forces that were in continuous and active operation up to the time of the harm, or created a situation harmless in itself unless acted upon by other forces for which the actor is not responsible. *Poe v Detroit*, 179 Mich App 564, 576-577; 446 NW2d 523 (1989), quoting 2 Restatement Torts, 2d, § 433, p 432. Here, the hole in the fence was harmless by itself and too remote to be a substantial factor in causing the injury at issue.

Accordingly, plaintiff failed to state a claim on which relief could be granted, and summary disposition was properly granted to defendant pursuant to MCR 2.116(C)(8).

We affirm.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Jeffrey L. Martlew

[1] Plaintiff argues that the trial court erred in finding that the hole in the fence was not *the* proximate cause of the injury, rather than considering whether it was *a* proximate cause. Under these facts, we do not find the distinction to be significant.